February 6, 2018

PETITION OF PUBLIC CITIZEN LITIGATION GROUP & 12 OTHERS PURSUANT TO LOCAL RULE 83-2 TO AMEND LOCAL RULE 11-1(b)

This Court and the three other federal district courts in California have promulgated rules under which attorneys may not be admitted to practice in those courts unless they are active Members of the Bar of the State of California. This Petition asks this Court to amend Local Rule 11-1(b) to delete the requirement that applicants for admission to the bar of this Court must be members of the California bar. Copies of this Petition are being sent to the Clerk of each of the District Courts in the Ninth Circuit. All of those courts require that members of their bars be admitted to the state court in which the district is located. However, within the Ninth Circuit, only three States require that all applicants for admission take the bar exam for that jurisdiction (California, Nevada, and Hawaii, plus the Territories of Guam and North Marianas). NAT'L CONFERENCE OF BAR EXAM'RS AND AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 36 (2017*)* ("Nat'l Conf Report") http://www.ncbex.org/pubs/bar-admissions-guide/2017/mobile/index.html#p=48

SUMMARY OF PROPOSAL

Pursuant to Local Rule 83-2 and 28 U.S.C. § 2071(c), this Petition asks the Court to amend Rule 11-1(b), after providing notice and an opportunity to submit comments, to delete the requirement for California Bar admission, with the proposed text appearing on page 5. As more fully explained below, three reasons support this change.

(1) The requirement for California Bar admission does not bear any reasonable relationship to the actual practice in this Court because the procedures followed are established by federal rules and the issues in the vast majority of the cases in this Court arise under federal, not California law.

(2) Because the California Bar does not allow any attorney to be admitted on motion, having to take the California Bar exam imposes unjustified burdens of time and money for an attorney whose primary reason to obtain admission to that Bar is to be admitted to practice in this Court. In addition, once admitted, a lawyer must continue to be an active dues-paying member of the California Bar to remain a member of the Bar of this Court, even when a lawyer does not regularly practice in California. These burdens are wholly out of proportion to any possible benefit that might be realized for clients and the Court from imposing such a requirement.

(3) The requirements for pro hac vice admission — in particular the payment of $310 for each attorney in each case — are burdensome. The required payment must be made not only by attorneys who have a major role in a case, but also by those whose appearance is on behalf of an amicus or a class member objecting to a settlement of a class action, or in connection with motions pertaining to a subpoena issued in support of litigation pending in a different district.

THE PETITIONERS

The Addendum to this Petition describes each of the Petitioners and explains their interests in supporting the proposed rule change. The reasons for their support vary, because the petitioners represent a variety of affected persons, including non-profit organizations providing pro bono legal services; organizations of attorneys; and a

membership organization of for-profit businesses. Each Petitioner has concluded that the current requirement of membership in the California bar imposes unnecessary burdens on lawyers and clients alike, although in different ways and in different circumstances.

HISTORY OF RULE 11-1(b)

Shortly after the Federal Rules of Civil Procedure became effective in 1938, a committee of Federal District Judges, chaired by Judge John Knox of the Southern District of New York, prepared a report, FED. JUDICIAL CONFERENCE, REPORT ON LOCAL DISTRICT COURT RULES (1940), *reprinted* in 4 Fed R. Serv. 969 (1941) (hereinafter, the "Knox Report"). The Report sets forth the circumstances in which the committee thought local rules might appropriately supplement the uniform civil rules. The Report concluded that bar admission rules were appropriate for local adoption. The committee also included as an Appendix to the Report model rules for bar admission and other topics that it considered appropriate. A copy of the pages of that Appendix relating to attorney admission is included in the Addendum to this Petition.

The model rule on bar admission is noteworthy in that it did not suggest that the federal courts require admission to the bar of the state in which the federal court was located. Rather, it would have allowed admission for any attorney who was admitted by the highest court of "this state . . . or any other state" with one proviso: that the applicant "must show that at the time of his admission to the bar of that [other] court, the requirements for admission to that bar were not lower than those that were at the same time in force for admission to the bar of this state." Knox Report Appendix at 29. The committee described the proviso as "a step in the direction of higher standards for admission and will tend to make applicable to the Federal bar in any state at least the

standards which that state requires." *Id.* at 30. Thus, to the extent that the committee envisioned admission to a district court bar to exclude attorneys admitted in other states, it was solely because a particular state — not all other states — had lower standards for admission than the state where the district court was located.

This Court first enacted local rules in 1977 and amended them in 1988. On March 22, 1994, the Court appointed a committee to review all of the local rules and make suggestions for revisions. The committee issued its report on November 1, 1994, and on January 20, 1995, the Court published the report and requested comments on the proposed changes, which included a proposed change to Rule 11 on bar admission. The first ten pages of the notice and report, which include the material relevant to Rule 11, are attached (the "Notice").

At that time, this Court had no requirement that a member of the Bar of this Court be admitted to the California Bar. The committee proposed that change, among amendments that it designated "Policy Suggestions," as one that "it felt would be wise as a matter of policy." Notice at vii. In support of the change, the committee offered no studies or other evidence beyond its self-evident observations that the proposed rule "more closely restricts bar membership to members of the California bar" and that "the previous rule was less restrictive on this issue." The Rule was adopted, with no changes, but with one noteworthy feature: it allowed those attorneys who were admitted to this Court prior to the 1995 amendment to continue as members of the bar of this Court.

As a result, Rule 11-1 of this Court now provides as follows:

> **(b) Eligibility for Membership.** To be eligible for admission to and continuing membership in the bar of this Court an attorney must be an active member in good standing of the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other

than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.

PETITIONERS' PROPOSED RULE

Petitioners propose that the Rule be amended by deleting the following language:

> the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.

In the place of the language limiting new admissions to members of the California Bar, the following language, eliminating that restriction, would be inserted: "the bar of any State, Territory, or the District of Columbia." Under this proposal, Rule 11-1(b) would read as follows:

> **(b) Eligibility for Membership.** To be eligible for admission to and continuing membership in the bar of this Court, an attorney must be an active member in good standing of the bar of any State, Territory, or the District of Columbia.[1]

REASONS TO GRANT THE PETITION

1. The Current Rule Is Not Reasonably Related to Any Legitimate Purpose.

The requirement of admission to the California Bar is a barrier to admission to the federal courts in California by out-of-state attorneys in good standing where they primarily practice, and, therefore, there should be a good reason for it. This Petition is not like a court challenge to a bar admission rule in which the Court would have to give deference to the entity that issued the rule and would have to determine the appropriate level of scrutiny to apply. Because this Court has the power to change the rule whenever it finds cause to do so, the Petition need only show that the California Bar requirement is not reasonably necessary to serve a legitimate purpose.

[1] The full text of current Local Rule 11 is included in the Addendum.

(a) Federal Law Dominates the Cases in this Court.

The only possible justification for requiring licensed attorneys who wish to become members of the Bar of this Court to be admitted to the State Bar of California would be that many of the cases in this Court involve questions of California law. Yet because so many do not involve California law, that argument does not justify the rule. To begin with, federal courts apply federal procedural rules — civil, criminal, bankruptcy, and evidence, as well as the Court's local rules — to the proceedings before them. Before 1938, federal courts applied local procedural rules, and so knowing California state procedures might have made sense then, but that is no longer the case. To the extent that California Bar admission is a proxy for a lawyer being available to be in court, the increased use of electronic filing and teleconferencing has reduced the need for counsel who live and regularly practice in California. Moreover, even when motions are not decided on the papers alone, many judges hold hearings by telephone even for lawyers who have offices in the District. *See* Civ. L. R. 7-1(b).

On the substantive side, criminal cases are governed by federal criminal statutes and the Federal Rules of Criminal Procedure and the United States Constitution. Most laws at issue in bankruptcy and admiralty proceedings are federal, although issues of state law arise regarding claims in bankruptcies and may arise in other cases as well. Even then, for reasons discussed below for civil cases generally, the applicable state law may not be that of California. In short, as the American Law Institute observed, the requirement of local bar membership "is inconsistent with the federal nature of the court's business." RESTATEMENT OF LAW, THIRD, THE LAW GOVERNING LAWYERS § 3 comment *g* (AM. LAW INST. 2000).

On the civil side, cases fall into two major categories: cases arising under federal law, for which California state law is only rarely even a small part of the governing authority, and diversity cases, in which state law is the basis for the underlying claim. During the year ending June 30, 2016, 6,925 civil cases were commenced in the Northern District of California. *Statistical Tables for the Federal Judiciary*, ADMIN. OFFICE OF THE U.S. COURTS Table C-3 at 5 (June 30, 2016), http://www.uscourts.gov/statistics-reports/statistical-tables-federal-judiciary-june-2016. In addition, 591 criminal cases and 10,777 bankruptcy cases were filed, for a total of 18,293 cases. *Id.* Tables D at 3; Table F at 3. Among the civil actions, the United States was a party in 651, *id.* Table C-3 at 5, and pursuant to 28 U.S.C. § 517, its attorneys may appear in any court, federal or state. Of the 6,274 private cases, 1,084 were prisoner petitions, 590 were intellectual property cases, 502 were labor suits, and 963 were civil rights suits. *Id.* at 6. Complaints in these categories all appear to be based on federal substantive law, although some cases may also include closely related state-law claims under supplemental jurisdiction. Even in those "mixed" cases, the lawyer's expertise in employment, securities, or antitrust law, for example, is far more important to the client than whether the lawyer is admitted to the state court where the federal court is situated.

Of the 3,135 remaining private civil cases, 722 were contract cases, 273 were real property cases, 411 were personal injury cases, and 662 were "other tort cases," which may well include federal admiralty cases. *Id.* The remaining 1,067 cases were not categorized, but, based on their placement in the table, and the absence of any category for securities and antitrust cases, some of them are certainly cases based on federal substantive law. The Administrative Office does not publish statistics on the basis of

subject matter jurisdiction by District for *filed* cases, but from its data set on case *closings*, assisted by a researcher at the Federal Judicial Center, Petitioners were advised that there were 1,038 civil cases, based on diversity of citizenship, terminated in fiscal year 2016 in the Northern District of California. On the assumption that terminations and filings were approximately the same, diversity cases represented 16.5% of the private civil cases, but only 5.6% of the total of all cases.[2]

(b) Even Cases in This Court Involving State Substantive Law Do Not Require California Expertise.

Moreover, even when state law is significant in a particular case, the state law at issue is by no means certain to be the law of California. In diversity cases, the parties will always be from at least two jurisdictions, one of which is not California. With the laws of two or more jurisdictions a possibility, there is no particular reason to think that California law would apply even in a diversity case in federal court in California, using the applicable conflicts of laws principles (which will be decided based on the choice of law principles of the State in which the district court is located) or the choice of law provision in a contract. Moreover, a number of MDL diversity cases, including nationwide class actions, end up in California, where the judge will have to decide which state law(s) to apply to the claims. In one substantive area of law in which California is different from that of most states — it has community property — the exclusion of matrimonial cases from the scope of diversity jurisdiction, *Ankenbrandt v. Richards*, 504

[2] The Northern District's caseload is in line with the national numbers. Thus, of the 1,187,854 cases filed in all district courts for the 12 months ending March 31, 2016, 833,515 were bankruptcy cases, 79,787 were criminal cases and 274,552 were civil cases of which only 82,990 (7.0% of total filings and 30.2% of civil filings) were diversity cases. *Federal Judicial Caseload Statistics*, ADMIN. OFFICE OF THE U.S. COURTS (Mar. 31, 2016), http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2016.

U.S. 689 (1992), makes it unlikely that community property issues will arise with any frequency in this Court. To be sure, some cases in this Court involve questions of California law. But even in that subset of cases, there is no reason to presume that private lawyers who practice primarily outside of California are not fully qualified to represent their clients in those cases.

Two other reasons show that close familiarity with the substantive law of a particular state is not likely to be a significant factor in most federal court litigation. First, advising a client in advance about state law is quite different from handling a lawsuit after the claim has arisen. In the former situation, knowledge of the law can help avoid problems by careful planning, but that is no longer an option once the breach of contract or harm constituting a tort or a violation of another law has occurred. At that point, the role of the lawyer is to research existing law and apply it to the facts of the case, rather than predict what problems might arise and anticipate how to avoid them. Second, good litigators, which describes most of the lawyers who handle civil cases in federal courts, are used to venturing into new areas of substantive law; indeed, that is one of the skills that makes them good litigators. Thus, even if there are nuances of California law at issue in a given case, that is a common aspect of practice for a federal court litigator.

(c) Other Aspects of the Current Rule Show that the California Bar Admission Requirement is Unnecessarily Burdensome.

Two features of the current rule undermine any purported basis for the requirement of California Bar admission. First, the rule makes an exception for attorneys who were admitted to the Bar of this Court prior to September 1, 1995, based on admission to the bar of another State, even if they still are not admitted in California.

That exception shows that the Court recognizes that litigants, opposing counsel, and the judges of this Court are able to conduct litigation with lawyers who have been admitted to the Bar of the Court, but not the California Bar.[3]

Second, the current rule requires that attorneys must continue to be "active" members of the California Bar. As a result, if a California attorney moves his or her primary practice to another jurisdiction, the right to practice in this Court will depend on whether the attorney continues to pay the $410 that is currently charged active California lawyers, as well as the costs to comply with the CLE requirement of the California Bar (25 hours of CLE every three years, http://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements). The CLE requirement may not dovetail with any CLE requirements of the lawyer's primary bar, and may require the lawyer to incur substantial additional costs.

Moreover, the requirement for admission to the local state court as a condition of admission to the federal court inevitably restricts clients' choices of who their attorneys will be. That limitation is unjustified because there is no reason to assume that clients with cases in this Court will not be able to make a proper assessment as to whether the case is one in which knowledge of local law is important or whether their preferred lawyer is able to handle the matter, even with local law issues as part of the mix. Federal court diversity contract or property claims typically involve significant matters, for which the client is either sophisticated or has advice of in-house counsel. As for plaintiffs in tort actions, there is no reason to think that the market for cases in the federal courts is so

[3] The fact that former members of the California Bar admitted to this Court after September 1995 are removed from the Court's bar if they retire from the California bar, even while maintaining active status in the bar of another state, further shows the arbitrariness of the current rule.

imperfect that this Court needs to require that the plaintiff hire a lawyer who is a member of the California Bar for cases in this Court, regardless of how insignificant issues of California law may be to the outcome. The argument to allow client choice is even stronger, and the local law rationale even less weighty, in federal question, criminal, and bankruptcy cases, yet the California Bar admission requirement applies to those lawyers who only handle cases arising under federal law.

In addition, the rules of professional responsibility and the legal malpractice laws protect clients from unqualified and unethical lawyers, far more effectively than the rule requiring California Bar admission. Local Rule 11-4(a)(1) of this Court incorporates the State Bar of California's Rules of Professional Conduct, including Rule 3-110 which states:

> (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
>
> (B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.
>
> (C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.

Finally, under the current Rule, if a client prefers to have as lead counsel a lawyer who is not eligible to become a member of the Bar of this Court, that will generally require retaining and paying for local counsel, not just to sign papers, but, for at least some judges, to appear in court. *See* Civil L.R. 11-3(a)(3), (e). Unless there is some reason to believe that clients cannot make appropriate decisions about which lawyer they

want to represent them in federal court litigation, a local rule insisting that clients prefer California lawyers, no matter what the legal and factual issues may be, is very hard to justify.

2. California Bar Admission Is Burdensome.

Because California does not allow admission on motion and does not provide for admission on a reciprocity basis, the burden imposed by this Court's admission rule is even greater. Even if California allowed admission on motion or through reciprocity, Petitioners would nonetheless urge this Court's to revise its rule for the reasons set forth in the prior section. Nonetheless, the requirements for admission to the California State Bar exacerbate the problem.

Everyone, no matter how long they have practiced law, no matter if their work specializes in a single subject, even one dominated by federal law, must pass the California Bar exam to be admitted to the State Bar, and thus to be eligible for admission to the Bar of this Court. As Justice Kennedy observed in *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 68 (1988), "[a] bar examination, as we know judicially and from our own experience, is not a casual or lighthearted exercise." For lawyers who have been practicing elsewhere for a number of years, the exam requirement is particularly burdensome. The bar exam is a general test, and most lawyers specialize, and hence have no regular contact with many areas that the exam tests. As a result, a practicing lawyer will probably have to take a not-inexpensive California Bar prep course,[4] especially given the low pass rate for the California bar (35.3% for the February 2017 exam),

[4] Kaplan's discounted courses currently are priced between $1699 and $2399. *California Bar Review Course*, KAPLAN (last visited Jan. 31, 2018), https://www.kaptest.com/bar-exam/courses/california-bar-review-course?state=california.

including the attorneys-only exam (44.5% for the same exam). *General Statistics Report, February 2017 California Bar Examination*, THE STATE BAR OF CAL. (Mar. 26, 2017), http://www.calbar.ca.gov/Portals/0/documents/admissions/Statistics/FEB2017STATS.052617_R.pdf.

In contrast to an experienced lawyer who decides to live and work in California, it is very hard for litigating lawyers practicing elsewhere to justify taking the time away from pending matters, which may result in a substantial loss of income, to take a state bar exam that is needed only to be admitted to the federal district courts of that state in order to handle an occasional matter there. Finally, the attorney exam itself costs $983, and once admitted, the lawyer must pay $410 per year to the California Bar, which the lawyer would not pay except to continue to be a member of the bar of this Court.[5]

Whether California Supreme Court is justified in continuing to insist that all applicants must take the California Bar exam is not the question that this Court must decide. Rather, given the admitted difficulty in obtaining bar admission in California, the question is whether this Court is justified in insisting that applicants for admission satisfy that requirement in addition to being in good standing in another State or the District of Columbia. And on that question, the answer is decidedly "No."

The four district courts in California that require admission in the State court are not unique among the federal district courts. However, the combination of State court bar admission and requiring all bar applicants to take the bar exam places those courts in a distinct minority. A majority of district courts nationwide require admission to the local

[5] There is also a $153 laptop charge for the exam. *Schedule of Fees*, THE STATE BAR OF CAL. (last visited Jan. 31, 2018), https://www.calbarxap.com/applications/CalBar/info/fees.html.

State Bar, but only eight of the States comprising those districts require all applicants to take their state's bar exam.[6] As petitioners explain above, we see no connection between being admitted to the bar of the state where a federal district court is located, and the ability to provide quality legal services in that court. We therefore oppose all such requirements as unnecessary anywhere. The requirement is also unduly burdensome for the additional reasons that admission to the California Bar requires every applicant to pass the California Bar exam and continue to be an active dues-paying member of that bar.

3. Pro Hac Vice Admission Is Not A Feasible Alternative.

The third factor compounding the problem for lawyers and clients with cases in this Courts is that admission on a pro hac vice basis is not a feasible option for several reasons. First, it is available only with the cost and burden of having local counsel in the case. N.D. Cal. Civ. R. 11-3(a)(3). Second, pro hac vice admission is not automatic, although most pro hac vice motions are granted, with no apparent requirement that the Court determine whether there are any issues of California state law in the case and whether the attorney seeking admission is qualified to handle them. Far from supporting the current practice, the ease of admission suggests that there is no real reason to have the California Bar admission requirement in the first place.

[6] The other state bars that do not allow admission on motion are Delaware, Florida, Hawaii, Louisiana, Nevada, Rhode Island and South Carolina, plus Guam and the Northern Mariana Islands. Of these, Rhode Island requires that attorneys admitted elsewhere only have to take the essay portion of the Rhode Island Bar Exam. In February 2017, South Carolina began using the Uniform Bar Exam, which will make it easier to gain admission to its bar, but not eliminate the cost of application and annual dues. NAT'L CONF REPORT, *supra* note 1, at 21-22, 27, 32, 36-37, http://www.ncbex.org/pubs/bar-admissions-guide/2017/mobile/index.html.

Third, the charge of $310 is for *each* individual attorney's pro hac vice admission in *each* case, and is presently the second highest pro hac vice admissions fee in the United States. The charge is the same as the fee for permanent admission to the bar of this Court, and payment is required even if it the lawyer is simply objecting to a class action settlement or seeking to file an amicus brief. In this respect the fee operates like a toll on access to justice and is particularly harmful where a lawyer is handling a matter on a pro bono basis. For these reasons, pro hac vice admission is not a substitute for full admission, and the pro hac vice rule does not create a feasible alternative.[7]

4. State Bar Admission Is Not Needed to Discipline Unethical Attorneys.

Courts have a legitimate interest in being able to assure that Members of their Bar are subject to discipline by them. Eliminating the requirement that a lawyer be admitted to the State Bar in the district in which the federal court sits would not present a problem in this regard, especially when compared with the situation in which a lawyer is admitted pro hac vice. First, a Member of the bar of this Court who acts contrary to court rules may permanently lose the right to practice in this Court, whereas an attorney admitted pro hac vice will mainly lose the opportunity to participate in one case.

Second, if a lawyer is disciplined in one jurisdiction, that information is generally forwarded to all other jurisdictions in which the lawyer is admitted, which may not include places in which the lawyer is admitted for one case on a pro hac vice basis.

Third, the best proof that discipline is not a problem is the fact that many districts do not require admission to the local state bar, and there is no evidence of which we are

[7] Rule 11-3(b) imposes additional restrictions on pro hac vice admission. With certain limited exceptions, an applicant is not eligible for pro hac vice admission if she or he "**(1)** Resides in the State of California; or **(2)** Is regularly engaged in the practice of law in the State of California."

aware that those districts are having any discipline problems with out of state attorneys who are Members of their Bar.

Finally, the Court has, unintentionally, conducted a limited experiment on whether there would be any discipline or other problems from an attorney's lack of admission to the California bar, and so far as Petitioners can determine, there are no reports of such problems. The experiment arose from the express exception created in 1995 for attorneys who are not members of the California Bar, but who had previously been admitted to the Bar of this Court. If any problems arose from that general exception, they surely would have surfaced in the intervening 23 years, and the fact that they have not provides further support for the conclusion that the requirement of membership in the California Bar to be eligible for membership in the Bar of this Court should be deleted, and the Petition granted.

CONCLUSION

For the foregoing reasons, the Court should institute a notice and comment rulemaking proceeding that would eliminate the requirement that an attorney must be a member of the State Bar of California to be a member of the Bar of this Court from Rule 11-(b), which would then read as follows:

> **(b) Eligibility for Membership.** To be eligible for admission to and continuing membership in the bar of this Court, an attorney must be an active member in good standing of the bar of any State, Territory, or the District of Columbia .

Respectfully Submitted

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ADDENDUM

DESCRIPTIONS OF PETITIONERS

Public Citizen Litigation Group is a public-interest law firm within the non-profit consumer advocacy organization Public Citizen Foundation. Our lawyers are located in the District of Columbia, but regularly appear in cases in federal courts across the country, including in the Northern District of California. At times during the firm's 45 years, we have represented in the Northern District clients litigating as parties, clients filing as amicus curiae, clients appearing as objectors to proposed class action settlements, and "John Does" challenging subpoenas to Internet Service Providers seeking information to identify the Does. In each case, we represent the client on a pro bono basis, although where we represent a plaintiff we may seek an award of attorney fees when we prevail. Currently, none of our attorneys is admitted to practice in the Northern District. Therefore, to appear in the Northern District, we must find local counsel, generally also pro bono, and the attorney from our office with primary responsibility must apply for pro hac vice admission and pay a fee, currently $310. The requirement of paying a pro hac fee applies even to our staff attorney who is a member of the California Bar but on inactive status, because the Northern District of California deems a lawyer "inactive" who is on inactive status with the California Bar. Another of our attorneys was previously admitted to the Northern District but lost her admission after approximately 15 years, when she voluntarily retired from the California Bar (but retained her membership in the Bar of the District of Columbia).

American Civil Liberties Union is a national civil liberties and civil rights organization founded in 1920 with affiliates or chapters in every state. It often litigates cases in California federal courts, and the rule as it stands is an impediment to its doing so, and to its working with attorneys who are not members of the California state bar, even if those attorneys are fully capable of and deeply versed in litigating in federal court. For the reasons elaborated in the petition, it supports the requested rule change.

Association of Corporate Counsel, is a global bar association of over 40,000 in-house attorneys who practice in the legal departments of more than 10,000 organizations located in at least 85 nations. It strongly supports the amendment by this court of Local Rule 11.1(b) to delete the requirement of membership in the California bar in order to be admitted to the bar of this Court. Our members' companies may be involved in litigation in this district and wish to use the expertise of our members, as well as outside counsel, who may not be California bar members but who would be the most knowledgeable and efficient choices for their legal work. These in-house and outside counsel, admitted in other jurisdictions, perform for sophisticated corporate clients and should be allowed to practice in federal court without the unnecessary burden of gaining admission to the California bar.

Cato Institute is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato files *amicus* briefs in cases arising around the country, and thus has an interest in

ensuring reasonable admission rules in all jurisdictions that permit the filing of *amicus* briefs, including the Northern District of California. *See, e.g., Google LLC v. Equustek Solutions, Inc.*, No. 5:17-cv-04207-EJD, Dkt. 27 & 40 (N.D. Cal.). As a non-profit organization, Cato is especially sensitive to litigation costs, and high pro hac admission fees may preclude us from filing. Cato also has a larger institutional interest in vindicating the right to choice of counsel, both as a general means of securing access to justice for all litigants, and also as a component of criminal defendants' Sixth Amendment right to the assistance of counsel. Cato supports the petition because the proposed rule change would enable parties to choose from a wider range of qualified counsel and secure representation at lower cost.

Center for Constitutional Litigation, P.C. (CCL) is a law firm located in New York, NY with a nationwide practice, that occasionally has cases and currently has one case pending in the Northern District of California, though no lawyer in the firm is admitted to that court's bar or the bar of the State of California. In that case, CCL lawyers represent the City of Oakland in *City of Oakland v. Wells Fargo & Co.*, Case No. 3:15-cv-04321-EMC, having been admitted *pro hac vice*. Because our practice takes our lawyers into federal and state courts throughout the nation, CCL is keenly interested in the rules that govern its admission to the bar of this Court. When lawyers in the firm have cases in the Northern District, they must associate with (and pay) local counsel, whether that is in the best interests of their clients and they must apply for and pay for pro hac vice admission in each case in which they are counsel.

Competitive Enterprise Institute's Center for Class Action Fairness represents class members pro bono against unfair class action procedures and settlements. With a high volume of class actions filed in the Northern District, we regularly appear in the Northern District on behalf of individual class members objecting to unfair class action settlements. We handle all of these cases pro bono, although we may seek attorneys' fees where our work substantially improves a settlement. Only one of our five attorneys is admitted to the Northern District and is a member of the California bar. Because a large percentage of our caseload is in the Northern District, it is impractical for that single attorney to handle all of our work in the Court. As a result, our other attorneys often must apply for pro hac vice admission and pay the $310 fee, instead of paying the identical Northern District bar admission fee only once. We also are required to retain local counsel who are physically present in the district in such cases, even though those local counsel add nothing to our understanding of the local rules or the underlying law. This adds thousands of dollars a case to our expenses. Combined with the expense of litigating across the country and our limited budget, it has affirmatively deterred us from participating in meritorious litigation.

Consumers for a Responsive Legal System ("Responsive Law") is a non-profit organization located in Washington, D.C. Responsive Law seeks to make the legal system more affordable, accessible and accountable to ordinary Americans. Responsive Law believes that requiring state bar membership for an appearance in federal court provides no benefit to individuals and small businesses seeking counsel for matters before a federal court. It does, however, limit the number and variety of lawyers from

whom a litigant can select its counsel, thereby restricting consumer choice and artificially raising costs for parties in federal litigation. Unchecked protectionism of this sort is one of the reasons why the United States currently ranks 94th out of 113 countries in "affordable and accessible civil justice" according to the most recent Rule of Law Index issued by the World Justice Project.

Earthjustice is a non-profit public interest law firm. Earthjustice is headquartered in San Francisco, has an office in Los Angeles, and maintains additional offices in Alaska, Hawaii, Washington, Colorado, Montana, Pennsylvania, Florida, New York and Washington D.C. Although a number of attorneys in Earthjustices's California offices are admitted to and practice in the Northern District, some of Earthjustices's litigation in this District is handled by attorneys who are not based or barred in California, and sometimes these non-California attorneys co-counsel a case in this District with an attorney who is admitted here. If these non-California attorneys were admitted to the Northern District bar, they would not need local counsel and would not have to pay the $310 pro hac vice filing fee for each case on which they worked.

Natural Resources Defense Council is a non-profit advocacy organization with members throughout the United States. NRDC is headquartered in New York, and maintains non-California offices in Illinois, Montana, and Washington, DC, as well as in San Francisco and Santa Monica, California. Although a number of attorneys in NRDC's California offices are admitted to and practice in the Northern District, some of NRDC's litigation in this District is handled by attorneys who are not based or barred in California, and sometimes these non-California attorneys co-counsel a case in this District with an attorney who is admitted here. If these non-California attorneys were admitted to the Northern District bar, they would not need local counsel and would not have to pay the $310 pro hac vice filing fee for each case on which they worked.

Pacific Legal Foundation (PLF) is a national pro bono public interest litigation firm with offices in California, Washington, Florida, and Virginia. A number of PLF attorneys are members of the bar associations of states other than California, although most PLF attorneys are also members of the California State Bar. PLF litigates constitutional and other claims on behalf of its clients in federal courts across the nation. PLF attorneys are experts in several areas of federal law, including property rights and permit exactions, federal environmental law (particularly the Clean Water Act and Endangered Species Act), race and sex preferences and discrimination, and freedom of speech and association. These legal fields employ a more or less unified national body of federal case law that is applicable in all federal courts. In litigating claims grounded in these fields, PLF attorneys' credentialing by the state bar association for the state in which the federal district court sits is not germane to their ability to represent clients and serve as officers of the federal district court. These attorneys' original credentialing as lawyers by any state bar adequately serves these purposes. The Northern District's rule requiring members of the Northern District Bar to first be members of the California State Bar serves no purpose that membership in another state bar association does not serve, and impedes PLF attorneys who are not California State Bar members from carrying out their

public interest mission in representing clients with federal law claims that are properly venued in the Northern District of California.

Robert S. Peck is president of the Center for Constitutional Litigation, P.C. (CCL), a law firm located in New York, NY, and is admitted to practice in the State of New York and the District of Columbia. He is admitted to practice and has handled cases in the Supreme Court of the United States, six federal circuit courts of appeal, and five U.S. District Courts, while also having appeared pro hac vice in four other federal circuit courts and 13 other U.S. District Courts. In addition, he has litigated cases in state court in 25 states. Because his practice occasionally takes him to various federal district courts in California, including a current matter pending in the Northern District of California, he is keenly interested in the rules that govern admission to practice in the Northern District. Currently, when litigating in that court, he must associate with (and pay) local counsel, whether that is in the best interests of his clients and must apply for and pay for pro hac vice admission in each case in which he is counsel.

Public Justice is a national public interest advocacy organization headquartered in Washington D.C. with a branch office in Oakland, California. Our in-house staff attorneys team with private attorneys around the country to fight injustice and preserve access to the courts for ordinary people. The bulk of our litigation is in the federal courts. Public Justice is supported by the membership contributions of thousands of attorneys nationwide, many of whom are not members of the California bar and hence are not eligible to be members of the Northern District bar. Instead, when they have cases in the Northern District, they must associate with (and pay) local counsel, whether or not that is in the best interests of their clients, and they must apply for and pay for pro hac vice admission in each case in which they are counsel. We support the petition because we believe that the current admissions rules in this District are unduly restrictive and burdensome. In addition, we believe that the choice of whether to have a lawyer admitted to the state court in which the federal court sits is one that should be left to the client and the client's counsel, not imposed on the client by the Northern District rules.

John Vail is the principal of John Vail Law PLLC, a law firm located in Washington, DC, and devoted to appellate and motions practice throughout the United States. Mr. Vail is admitted to the bars of Tennessee, New Mexico, North Carolina, and the District of Columbia, and to numerous federal district and appellate courts, including the Supreme Court. He has served as counsel in cases in state and federal courts in California. He has expended significant time and effort being admitted pro hac vice in courts around the country. He has been consulted about appearing in cases pending in the Northern District. The current rules regarding admission impede him from appearing there.

LOCAL RULE 11-1 (Current Version)

11-1. The Bar of this Court.

(a) Members of the Bar. Except as provided in Civil L.R. 11-2, 11-3, 11-9 and Fed. R. Civ. P. 45(f), an attorney must be a member of the bar of this Court to practice in this Court and in the Bankruptcy Court of this District.

(b) Eligibility for Membership. To be eligible for admission to and continuing membership in the bar of this Court an attorney must be an active member in good standing of the State Bar of California, except that for any attorney admitted before September 1, 1995 based on membership in the bar of a jurisdiction other than California, continuing active membership in the bar of that jurisdiction is an acceptable alternative basis for eligibility.

(c) Procedure for Admission. Each applicant for admission must present to the Clerk a sworn petition for admission in the form prescribed by the Court. Prior to admission to the bar of this Court, an attorney must certify:

(1) Knowledge of the contents of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the Local Rules of this Court;

(2) Familiarity with the Alternative Dispute Resolution Programs of this Court;

(3) Understanding and commitment to abide by the Standards of Professional Conduct of this Court set forth in Civil L.R. 11-4; and

Familiarity with the Guidelines for Professional Conduct in the Northern District of California.

(d) Admission Fees. Each attorney admitted to practice before this Court under this Local Rule must pay to the Clerk the fee fixed by the Judicial Conference of the United States, together with an assessment in an amount to be set by the Court. The assessment will be placed in the Court Non-Appropriated Fund for library, educational and other appropriate uses.

(e) Admission. Upon signing the prescribed oath and paying the prescribed fees, the applicant may be admitted to the bar of the Court by the Clerk or a Judge, upon verification of the applicant's qualifications.

(f) Certificate of Good Standing. A member of the bar of this Court, who is in good standing, may obtain a Certificate of Good Standing by presenting a written request to the Clerk and paying the prescribed fee.

(g) Reciprocal Administrative Change in Attorney Status. Upon being notified by the State Bar of California (or of another jurisdiction that is the basis for membership in the bar of this Court) that an attorney is deceased, has been placed on "voluntary inactive" status or has resigned for reasons not relating to discipline, the Clerk will note "deceased," "resigned" or "voluntary inactive," as appropriate, on the attorney's admission record. An attorney on "voluntary inactive" status will remain inactive on the roll of this Court until such time as the State Bar or the attorney has notified the Court that the attorney has been restored to "active" status. An attorney who has resigned and wishes to be readmitted must petition the Court for admission in accordance with subparagraphs (c) and (d) of this Rule.

(1) The following procedure will apply to actions taken in response to information provided by the State Bar of California (or of another jurisdiction or other jurisdiction that is the basis for membership in the bar of this Court) of a suspension for **(a)** a period of less than 30 days for any reason or **(b)** a change in an attorney's status that is temporary in nature and may be reversed solely by the attorney's execution of one or more administrative actions. Upon receipt of notification from the State Bar that an attorney has been suspended for any of the following, the Clerk will note the suspension on the attorney's admission record:

(A) Noncompliance with Rule 9.22 child and family support;

(B) Failure to pass PRE;

(C) Failure to pay bar dues;

(D) Failure to submit documentation of compliance with continuing education requirements.

While suspended, an attorney is not eligible to practice in this Court or in the Bankruptcy Court of this District. In the event that an attorney files papers or otherwise practices law in this Court or in the Bankruptcy Court while an administrative notation of suspension is pending on the attorney's admission record, the Clerk will verify the attorney's disciplinary status with the State Bar (or other jurisdiction, if applicable). If the attorney is not then active and in good standing, the Chief District Judge will issue an order to show cause to the attorney in accordance with Civil L.R. 11-7(b)(1).

Upon receipt by the Court of notification from the State Bar that the attorney's active status has been restored, the reinstatement will be noted on the attorney's admission record.

(2) In response to information provided by the State Bar of California (or other jurisdiction that is the basis for membership in the bar of this Court) that an attorney has been placed on disciplinary probation but is still allowed to practice, the Clerk will note the status change on the attorney's admission record. An attorney with that status must, in addition to providing the notice to the Clerk required by Civil L.R. 11-7(a)(1), report to the Clerk all significant developments related to the probationary status. Upon receipt by the Court of notification from the State Bar that the attorney's good standing has been restored, the change will be noted on the attorney's admission record.

KNOX REPORT RULES APPENDIX
ATTORNEYS' PORTION

SUGGESTED LOCAL RULES FOR THE UNITED STATES DISTRICT COURTS

Rule 1. Attorneys.

(a) ***Roll of Attorneys.*** **The bar of this court consists of those heretofore and those hereafter admitted to practice before this court, who have taken the oath prescribed by the rules in force when they were admitted or that prescribed by this rule, and have signed the roll of attorneys of this district.**

(b) ***Eligibility.*** **Any person who is a member in good standing of the bar of (1) the highest court of this state or of (2) the highest court of any other state, is eligible for admission to the bar of this court, but any person who may apply for admission to the bar of this court on the basis of his admission, after the effective date of this rule, to the bar of the highest court of any other state must show that at the time of his admission to the bar of that court, the requirements for admission to that bar were not lower than those that were at the same time in force for admission to the bar of this state.**

Note. **It is stated elsewhere in this report that nation-wide uniformity regarding eligibility for admission to practice in the various district courts is neither feasible nor desirable. However, since nearly every district has rules on this subject, and since some of those rules seem to make possible the infiltration of unfit persons into the Federal bar, and since some are couched in archaic and obscure language, this draft is presented for the consideration of those judges who may feel that the substance of the practice which it states would fit the needs of their respective districts. It will be noted that the draft contains a proviso that will be a step in the direction of higher standards for admission and will tend to make applicable to the Federal bar in any state at least the standards which that state requires.**

(c) *Procedure for Admission.* Each applicant for admission to the bar of this court shall file with the clerk a written petition setting forth his residence and office addresses, his general and legal education, and by what courts he has been admitted to practice. If he is not a resident of this [district] [state] [and] [or] does not maintain an office in this [district] [state] for the practice of law, he shall designate in his petition a member of the bar of this court who maintains an office in this [district] [state] for the practice of law with whom the court and opposing counsel may readily communicate regarding the conduct of cases in which he is concerned, and he shall append to his petition the written consent of the person so designated. The petition shall be accompanied by certificates from two reputable persons who are either members of the bar of this court or known to the court, stating how long and under what circumstances they have known the petitioner and what they know of the petitioner's character. If a certificate is presented by a member of the bar of this court, it shall also

state when and where he was admitted to practice in this court. The clerk will examine the petitions and certificates and if in compliance with this rule, the petitions for admission will be presented to the court at the opening of the first ensuing session which convenes not earlier than _ days after the filing of the petition. When a petition is called, one of the members of the bar of this court shall move the admission of the petitioner. If admitted the petitioner shall in open court take an oath to support the Constitution and laws of the United States, to discharge faithfully the duties of a lawyer, and to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he shall, under the direction of the clerk, sign the roll of attorneys and pay the fee required by law.

***Note.* It has been suggested that the rule should**

provide for the appointment of a committee of the bar to pass upon applications and, if necessary, examine the applicants personally. Rules of this character have long been in force in the district court of Massachusetts and have been incorporated into new rules in Arkansas and Oklahoma. Although the committee recognizes the desirability of such a procedure for some courts, it does not feel that it is necessary in the majority of districts and, therefore, it has not incorporated the provision into this rule. For judges who desire to inaugurate such a practice, the Arkansas, Massachusetts, and Oklahoma rules will serve as helpful guides.

It will be noted that the proposed rule provides that the petitions and certificates are to be presented to the court by the clerk "at the opening of the first ensuing session which convenes not earlier than — days after

the filing of the petition." This, of course, is a routine matter for the clerk and the provision must be varied to conform to the custom of the particular district concerned.

The alternative bracketed words "[district] [state]" in lines 28,29,30 and 33 are presented in consequence of the fact that in states where there are more than one district, the situations differ so that choice is essential.

For example, in New York there is no valid or practical distinction so far as the New York City bar is concerned between the Southern and Eastern districts of New York, and opinion, therefore, supports a requirement not measured by the district. In general, the word "state" should be used except where special reasons exist for limiting the rule to the "district."

(d) ***Permission to Participate in a Particular Case.*** **Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not eligible for admission to the bar of this district under subdivision (b) of this rule, may be permitted to appear and participate in a particular case. In his application so to appear he shall make the designation and append thereto the consent which are required by subdivision (c) of this rule from non-resident applicants for admission to the bar of this court.**

(e) ***Disbarment and Discipline.*** **Any member of the bar of this court may for good cause shown and after an opportunity has been given him to**

be heard, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the court may deem proper.

Whenever it is made to appear to the court that any member of its bar has been disbarred or suspended from practice or convicted of a felony in any other court he shall be suspended forthwith from practice before this court and, unless upon notice mailed to him at his last known place of residence he shows good cause to the contrary within_ days, there shall be entered an order of disbarment, or of suspension for such time as the court shall fix.
Any person who before his admission to the bar of this court or during his disbarment or suspension, exercises in this district in any action or proceeding pending in this court any of the privileges of a member of the bar or who pretends to be entitled so to do, is guilty of contempt of court and subjects himself to appropriate punishment therefor.

Note. **This subdivision is in accord with Rule 2 (5) of the Rules of the Supreme Court of the United States and the decision of that Court in *Selling* v. *Radford* (243 U. S. 46).**

NOTICE OF PROPOSED RULES CHANGES
NDCA JANUARY 1995

RULES COMMITTEE
OF THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Avenue
San Francisco, California 94102

January 20, 1995

TO: MEMBERS OF THE PUBLIC

FROM: JUDGE JAMES WARE, CHAIR

The United States District Court for the Northern District of California proposes to revise its Local Rules and has authorized circulation of the proposed revisions to the public generally for comment. The proposed revisions are intended to accomplish three primary objectives: (1) to conform the Local Rules to amendments to the national rules; (2) to renumber the local rules to correspond to the numbering of the national rules; and (3) to incorporate procedures which were tested under a pilot program pursuant to the Civil Justice Reform Act and which have been shown to be effective to secure the just, speedy and inexpensive determination of matters before the Court.

Enacted in 1977, the Local Rules of the Court are intended to supplement the national rules. They were last revised on November 1, 1988. Since 1988 amendments have been made to the national rules without corresponding amendments to applicable Local Rules. Effective December 1, 1993, a major amendment was made to the Federal Rules of Civil Procedure. In addition, over the course of time, the Court received numerous suggestions for modifications to its Local Rules from the bench and bar.

In 1993, Chief Judge Thelton E. Henderson requested the Rules Committee of the Court to undertake a major revision of the Local Rules. On March 22, 1994, pursuant to 28 U.S.C. § 2077, Chief Judge Henderson appointed an Advisory Committee on Civil Rules. The Advisory Committee was requested to review the Local Rules of the Court and to issue a report and recommendation to the Court.

On November 1, 1994, the Advisory Committee issued its report and recommendations, which were referred to the Rules Committee of the Court. The Rules committee considered the report and recommendations of the Advisory Committee, as well as suggestions from other sources. On January 10, 1995, the Rules Committee presented its proposed revisions of the Local Rules to the Court, which approved their publication for public comment.

The proposed revisions include modifications to the Bankruptcy Local Rules. October 22, 1994, the Bankruptcy Reform Act of 1994 became effective. It made comprehensive changes in the Federal Rules of Bankruptcy Procedure. The Bankruptcy Court for this District proposes to amend its Local Rules to reflect those amendments and to coordinate the numbering of the proposed Bankruptcy Local Rules with the proposed revisions of the Civil Local Rules.

The Court has not approved these proposed revisions but submits them for public comment. We request that all comments and suggestions be sent as soon as convenient and, in any event, no later than **April 20, 1995** to:

Judge James Ware
Chair of the Rules Committee
280 South First Street
San Jose, California 95113

At the conclusion of the comment period, the Rules Committee will consider the proposed revisions in light of any comments and will make recommendations to the Court. If adopted, the Revised Local Rules would become effective on July 1, 1995.

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OF THE
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NORTHERN DISTRICT OF CALIFORNIA

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District Judge Marilyn Hall Patel
United States District Court
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MEMORANDUM

TO: Rules Committee, United States District Court
Northern District of California

FROM: Local Rules Advisory Committee

DATE: November 1, 1994

RE: Draft of Proposed New Local Rules

The Local Rules Advisory Committee hereby transmits to the Rules Committee its proposal for new civil Local Rules. This memorandum is intended to introduce the draft by explaining the method by which it was prepared and the animating goals behind some of the proposals.

This Committee was appointed by Chief Judge Henderson pursuant to 28 U.S.C. § 2077(b) in March, 1994. Working closely with Judge Ware, the Committee has undertaken a comprehensive revision of the Court's Local Rules. In general, this revision was designed to accomplish several objectives:

(1) to remove provisions that were no longer applicable or appeared to conflict with pertinent provisions of the Federal Rules of Civil Procedure;

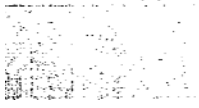
(2) to remove provisions that appeared unnecessary because the matters involved are now covered by the Federal Rules of Civil Procedure;

(3) to move into the Local Rules provisions currently in the Court's General Orders that seemed more appropriately included in the Local Rules;

(4) to arrange the provisions of the Local Rules so that they correspond to the Federal Rules of Civil Procedure;

(5) to integrate the provisions of General Order 34 into the Local Rules; and

(6) to consider possible changes in the rules on grounds of policy.



To accomplish these objectives, the Committee began with a rearrangement of the current local rules already done by Judge Ware that corresponded to the Federal Rules of Civil Procedure. Throughout the process, the Committee has worked closely with Judge Ware in fashioning the draft. Members of the Committee surveyed the current local rules to be sure that their provisions were properly re-designated to correspond to pertinent Federal Rules. In addition, the Court's General Orders and the standing orders of each Judge were reviewed to identify measures that might profitably be included in the Local Rules. The local rules of the other three districts in California were also reviewed to identify measures that might profitably be included in the Local Rules in this District.

Based on these various review processes, the Committee reached the conclusion that a number of matters presently covered in the local rules or General Orders should be in local rules but do not fit into civil Local Rules. Indeed, as to some of these matters other committees are drafting proposed rules. Accordingly, the attached draft contains a general set of civil Local Rules. As explained in proposed Local Rule 1-2(a), it contemplates adoption of additional local rules governing the following areas:

(1) Admiralty and Maritime Cases

(2) Alternative Dispute Resolution

(3) Bankruptcy Proceedings

(4) Criminal Proceedings

(5) Habeas Corpus Proceedings

Based on existing rules, the Committee is preparing proposals for the first and last of the above additional areas. Our intention is not to make any substantive change in the rules governing these areas. We understand that others are drafting rules for Bankruptcy and Criminal proceedings. A draft set of rules regarding Alternative Dispute Resolution incorporating provisions regarding arbitration from the Court's present local rules and from General Order 35 is under way but has not been completed for review by the Court.

Accordingly, the draft civil Local Rules follow the format of the Federal Rules of Civil Procedure. The final editing was delegated to a subcommittee, and there may be the occasion for the committee to suggest some additional modifications of language in some proposed rules. The draft includes cross-references to the current local rules and also occasional committee notes regarding the purpose of the provisions. It is likely that a reading of the entire document is the most effective way to appreciate its provisions, but we thought it would be worthwhile to point out certain features in the cover memorandum.

The remainder of this memorandum will highlight certain of the changes in light of the various objectives the drafting committee was pursuing. These might most easily be organized as uniformity, adjusting the local rules to the national rules and taking account of the CJRA experience, simplification and policy changes. The references to specific provisions will therefore be presented in that manner.

Uniformity

Some proposals reflect the committee's conclusion that uniformity is an important objective. Although specific standards are sometimes included, the committee was more concerned with having a uniform standard than with the specific content of the standard in question.

Local Rule 1-2 (Standing Orders): This rule establishes that the goal of the entire package of rules is to provide a comprehensive and uniform set of procedures so that individual orders will not be necessary with regard to matters covered by the local rules. The committee expected that matters relating to the conduct of the trial would still be tailored by individual judges.

Local Rule 7-2(a) (Motions): This rule provides that the notice period for motions be 35 days. The committee found that different judges had different notice requirements, but that several had directed 35 days' notice by standing orders, and the committee adopted that standard. The committee felt that the actual number of days was less important than that one uniform standard be employed by all judges.

Form A (Case Management Conference Statement and Proposed Order): Having surveyed the diverse requirements of different judges, the committee developed one form for such statements. The committee hopes not so much that this form be adopted unaltered as that it be used by all judges so that there would not be individual variations.

Adjusting to the national rules and CJRA experience

Several members of the committee have also served in the CJRA Advisory Group and had experience in the drafting of General Order 34. As the Court is aware, the December, 1993, amendments to Rules 16 and 26 altered provisions covering similar matters. Having reflected on the experience under General Order 34 and the new provisions of the national rules, the committee attempted to develop a coherent and effective case management system for civil cases in the district.

Local Rule 16 (case management): This rule incorporates the recent changes in Federal Rules 16 and 26 as well as building on the experience of General Order 34. Except for cases excluded under Local rule 16-1, all cases will involve a

tailored version of the initial disclosure requirements of Federal Rules 26(a)(1). Rule 16-2 sets out the basic case management schedule providing that most specified events occur during the first 120 days after commencement of the case. Although early discovery by consent is allowed, Local Rule 16-3 directs that non-consensual discovery occur only after the Court has considered the needs of the case in light of the disclosures made. parties who would suffer prejudice from waiting could obtain relief from the court to permit earlier initiation of formal discovery. Some features of General Order 34 that foreshadowed changes made in the national rules (e.g., early production of core documents) have been retained.

Largely invisible on the enclosed draft is another category of adjustments to take account of provisions of the Federal Rules. On occasion the committee eliminated provisions now in the local rules on the basis that the national rules adequately deal with the issue. For example, the draft does not include current rule 120-4 concerning calculation of time because it is inconsistent with Federal Rule 6(d). In this instance, the committee was aware that the existing rule is simple to use, but felt that it would be dubious to deviate from the Federal Rules on this point. Similarly, the committee is recommending considerable editing of current local rule 400, so that there is no repetition of the applicable Federal Rules or statutes, and the provisions regarding handling of appeals from decisions of Magistrate Judges have been trimmed on the theory that the Federal Rules provide substantial guidance. Other changes of this sort involved the local rules concerning the civil jury.

Simplification

In conjunction with reorganizing the rules to correspond to the arrangement in the Federal Rules, the committee tried to simplify the text of the current rules. Examples include:

Proposed Local Rules 3-4 and 3-5 on the form of papers filed would therefore cover all the materials appearing in current rules 120-1, 120-2, 200-1 and 200-2.

Proposed Local Rule 7-8 restates current local rule 220-9 so that it is easier to follow.

Policy Suggestions

The committee also included some changes that it felt would be wise as a matter of policy.

Local Rule 11 more closely restricts bar membership to members of the California bar; the previous local rule was less restrictive on this issue. It also requires lawyers admitted to practice before the Court to notify the Court of any change in their status in other courts that might bear on their status as members of the bar of this Court. In addition, Local Rule 11-11 spells out requirements for

student practice before the Court.

Local Rule 37 sets out a new means of resolving discovery disputes involving an informal chambers conference or an expedited motion. Some judges have experimented with such alternative devices, and the committee is recommending that the Court make them generally available to streamline and reduce the cost of discovery.

The committee has also recommended that chambers copies may be lodged at any branch of the clerk's office (Local Rule 3-7), as well as a mechanism for receipt of sealed documents (Local Rule 79-6). In addition, it has amplified the related case procedures to take advantage of economies that might result from coordination of cases (Local Rule 3-13).